

TESTIMONY OF
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In my testimony today, I want to address the hardship imposed on U.S. steel-consuming companies by the inability of the exclusion process to deal effectively with many of the requests for exclusion of specific products not available from domestic steel producers. The failure of the process to deal effectively with a large number of the highly complex, often fiercely contested exclusion requests has imposed unjustifiably high costs on some steel users who have had to pay the high tariffs to get material that was only obtainable from foreign sources. Other consumers were simply prevented from obtaining the material they needed. Some had to cease production of the products made from material unavailable in the United States. And a few companies moved production offshore, where they could obtain the needed steel without paying a prohibitively high tariff.

I want to emphasize that I am not here to criticize the U.S. officials who administer the exclusion system. It would be hard to imagine how they could have worked harder or given greater consideration to the views of the exclusion requestors or to those of the U.S. producers who opposed many of the exclusions. Overall, they granted a greater volume of exclusions than has been granted in any previous Section 201 proceeding. In particular, Joe Spetrini, Rich Weible and their staff at the Department of Commerce, together with Florizelle Liser and

Andrew Stephens at USTR, deserve everyone's gratitude and highest commendation. They had the quintessential thankless task and they did the best that anyone could have done.

The question for the Commission, however, is whether the exclusion process did or did not leave many steel consuming companies with a Hobson's Choice -- namely, to go without types of steel they badly needed and could not obtain domestically, or to pay a severely high tariff that they were unable to pass on to their customers in the form of higher prices for finished products. The sad fact is that this Hobson's Choice was indeed the end result in a very large number of exclusion contests.

This did not happen because government officials did not work hard enough or because they were biased or because they ignored the presentations made by the exclusion requesters. Rather, it happened because the exclusion system was and is simply incapable of resolving highly technical disputes concerning very sophisticated steel products and often-esoteric applications of those products. That fact must be recognized by this Commission and taken fully into account both by you and by the Administration in weighing the benefits of the Section 201 measures against the hardships imposed by those measures.

The reason the exclusion system failed -- and failed repeatedly -- to meet the genuine needs of steel consuming companies becomes readily apparent when one considers the nature of the disputed exclusions.¹ These were not, in the great majority of instances, cases in which a U.S. consumer simply said, "I need X, a steel product with a universally agreed definition, and

¹ While I, as counsel for a foreign steel producer, can and do criticize the U.S. producers for the adamancy and narrowness of many of their exclusion request oppositions, it is also true that the U.S. producers did not oppose -- indeed, acknowledged the validity of -- a substantial number of exclusion requests. They are to be commended for that.

no U.S. producer makes that product.” Would that life were so simple! Rather, the vast bulk of the request turned on such more subtle and complex issues as:

- whether one or more U.S. producers, none of which were currently making the item, had the capability of making it,
- whether a customer who requested exclusion of a specific product (that no U.S. steel company could make) would in fact be equally well served by accepting a somewhat different steel product that one or more U.S. firms were capable of supplying,
- whether a foreign supplier did in fact produce steel with greater consistency of some characteristic (smoothness, for example, or freedom from minor metallurgical differences from batch to batch) that the customer found desirable and, if so, whether that “better quality” was sufficient to grant an exclusion,
- whether, where a U.S. company could produce the steel item in some sizes but not in others, an exclusion would be appropriate on the basis that the importer’s customers demanded that the full range of sizes be from the same steel producer (say, for reasons of metallurgical consistency), or
- whether the distinguishing feature that made the steel item unavailable from U.S. suppliers could be defined in such a way as not to open up a loophole for other foreign suppliers and in a way that Customs could distinguish the excluded item from similar non-excluded items.

The Corus Group sees issues of this nature from a particular perspective, one we share with most of our U.S. customers. In the U.S. market, Corus is largely a supplier of specialized, high-value steels. We typically work with our customers -- and we and our customers work with their end-user customers -- to custom-tailor the metallurgies, chemistries, surfaces, dimensions and other characteristics of our steels to fit the end-user's particular needs. Indeed, we and the end-user often jointly develop the application for the steel. Not infrequently, we undertake to do something that most steel companies will not do -- namely, to guarantee that our steel will perform one or more designated functions (e.g., that it will satisfactorily make a specific auto part). Our customers, and their end-user customers, rely on these jointly-developed special characteristics of Corus' products.

This means that we and our customers repeatedly submitted exclusion requests that reflected our customers' genuine and often critical need for the specific steel characteristics we and they had developed together. The request would not simply be for "grade X hot-rolled sheet," but rather for "grade X hot-rolled sheet with metallurgy A, no more than B imperfections, a specified degree of smoothness and guaranteed to make a curlicue widget for a Ford minivan." U.S. producers would respond that they regularly make grade X hot-rolled sheet, that they have not made it with these specific qualities, but that they believe they can do so. Sometimes they would argue that some of the specific qualities were not really needed by the end-user, perhaps even contending that no steel company could produce steel consistently meeting the enumerated tolerances.

In this type of highly technical debate -- over who can and who can't achieve certain qualities and characteristics, and over whether the customer truly needs each and every one of the specified characteristics, much less whether the customer needs a performance guarantee --

the exclusion system breaks down. In case after case, the staffs at Commerce and USTR -- even with hard work and the best of intentions -- found themselves unable to say which side was right. Their difficulty was exacerbated by the fact that each side quite obviously believed, often passionately, in the correctness of their position. In a few cases -- including the battery quality hot band issue that Mr. Wilkes will discuss in a moment -- a fiercely fought complex exclusion issue went all the way up the chain of command for a cabinet-level decision.

The problem for steel consumers -- a problem that this Commission must understand and must consider the consequences -- is that the exclusion system's fully understandable inability to determine the truth between competing arguments of this highly complex nature led, in almost every case, to one of two unsatisfactory (for the steel consumer) results. In the majority of cases, the exclusion request was rejected on the basis that the burden of persuasion had not been met by the party seeking the exclusion. In a lesser number of instances, the government arbiters of these requests, probably acting out of a fear of an inequitable result even though they were unable to resolve the competing arguments, opted for a Solomonic "cut the baby in half" result. In most of those cases, this meant "granting" the exclusion but subjecting it to a volume cap.

Both of these types of outcome were bad -- often seriously bad -- for the steel consumer. The experience of Corus and its customers is that there have been very, very few instances in which the consumer was able (after the denial of the exclusion request) to obtain from a domestic producer a satisfactory alternative to the carefully-engineered steel for which exclusion had been sought. Nor have there been very many cases in which the end-user has been persuaded that it does not really need those custom-tailored attributes that it had so painstakingly developed with its foreign steel supplier.

That left the steel consumer with a very serious problem. In most cases that consumer is a parts supplier to an automaker, an appliance manufacturer or some other finished product manufacturer who is extremely resistant to accepting a pass-through of any significant part of the 201 tariff. That is especially true where, as is the case in much of the market for high-end, specialized steel, business is done on an annual contract basis. Time after time, therefore, the steel consumer/importer must either "eat" the 201 tariff (with severe effects on his profitability) or cease supplying a long-time customer.

In summary, then, the Commission should be aware that the exclusion process did not, and by its very nature could not, prevent serious harm to a large number of small to medium sized consuming companies that have relied for years on imports of specialized steel. Moreover, this harm did not have a corresponding benefit for domestic steel producers, who have not (except in a few cases) replaced the foreign seller as supplier of the specialized item.

Moreover, there is every likelihood that this problem for steel consumers will get worse if the President allows the 201 import restrictions to continue after this mid-term review. In each succeeding round of exclusion decisions, the Administration has been increasingly reluctant to grant exclusions, owing in part to vociferous complaints by U.S. producers that the exclusions are vitiating the overall relief.² In addition, the U.S. industry has undoubtedly already agreed to all or almost all the exclusions that they are going to agree to. For both reasons, it seems likely that future exclusion grants will dwindle markedly.

² While it is not the purpose of this testimony to address that issue, I must observe that such a claim is preposterous with regard to the myriad exclusions for specialized, high value products. The U.S. producers were understandably exorcised over a few large-volume commodity product exclusions granted in the weeks immediately following the March 5, 2002 Proclamation, but those appear to have been sui generis.

The Commission is about to hear testimony from Thomas Steel Strip concerning the battery quality hot band (BQHB) exclusion request. I think you will agree that that example confirms many of the points I have made concerning the inability of the exclusion process to meet the legitimate needs of steel consumers. I must say that my personal view is that there was no case clearer than BQHB for total exclusion of a product that the U.S. industry does not make, has made no attempt to qualify for, and has long demonstrated that it has not interest in producing. Instead, they want the battery manufacturers to accept different specifications in opposition to the explicitly expressed needs of the entire U. S. battery industry.

I would also note that appended to my testimony are a series of other examples, drawn from the exclusion experience of Corus and its customers, that further support my conclusions as to the inherent limitations of the exclusion process. For this hearing, the samples are presented in non-confidential form, deleting company names and such product-specific data as might reveal company identities or other proprietary information. In our post-hearing APO submission, we will include the omitted specifics.

The Exclusion Process Fails To Protect Consumers of
Specialized Steel Products -- Illustrative Examples

Long Products

- Free Machining Steels - Specialized h.r. bars with malleable properties, used in auto parts. U.S. cold finishers rely on Corus imports (a) for low levels of inclusions not achieved by U.S. suppliers, (b) because customers need metallurgical consistency across the full range of sizes and U.S. producers don't make the full size range, and (c) U.S. producers in 2002 had little or no availability. Result: Exclusion capped at 50% of U.S. consumers' needs.

Tin Mill Products

- Consumer had originally been supplied by U.S. company A, but had leakage problems. When consumer changed specification to correct that problem, A declined to supply and consumer turned to Corus. A opposed exclusion for new specification on ground that consumer should return to prior spec. Result: Exclusion was denied.

Flat-Rolled Products

- U.S. service center worked with Corus and auto parts makers to custom-tailor steel to each customer's needs and, in particular, to guarantee that the steel would make the customer's part. No U.S. producer would make such a guarantee nor had any qualified to make the specific products. As to most products, no U.S. producer could make the full range of sizes. Result: Exclusion was granted for only one of this service centers numerous products.
- Battery Quality Hot Band - See Thomas Steel Strip hearing testimony.
- Customer had used a specially designed Corus hot-rolled sheet for automotive bearings and bushings, but had switched to a U.S. producer who offered a lower price. When the U.S. producer's quality was unsatisfactory, the customer switched back to Corus and applied an exclusion on the ground that no U.S. producer could supply a satisfactory alternative. Result: Exclusion capped at approximately 7 percent of the volume needed by the customer.
- MS Pinole Point, a west coast galvanizer, relied on Dutch and Australian supply of full hard cold-rolled steel. In seeking exclusion, it acknowledged the U.S. producer can make the product, but presented "decline to supply" responses from all potential domestic suppliers. Result: Exclusion was denied and MS Pinole Point went out of business.